

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

STEPHEN ELLICOTT,

Plaintiff,

v.

AMERICAN CAPITAL ENERGY, INC.,
THOMAS HUNTON, and
ARTHUR HENNESSEY,

Defendants.

Civil Action No. 14-12152

**THOMAS HUNTON AND ARTHUR HENNESSEY'S RESPONSE TO PLAINTIFF'S
MOTION TO EXTEND**

Thomas Hunton ("Hunton") and Arthur Hennessey (Hennessey) (collectively "Defendants") herein respond to Plaintiff's Motion to Extend (Docket No. 32), correcting several erroneous averments made by Plaintiff and/or his counsel, including counsel's improper certifications of compliance with Local Rules 7.1(A)(2) and 37.1. Defendants further respond, agreeing in principal with American Capital Energy, Inc. ("ACE's") Limited Opposition (Docket No. 34). Specifically, Defendants state as follows:

1. On April 17, Plaintiff's counsel responded to Defendants and ACE's previous request to schedule Plaintiff's deposition by suggesting that same be accomplished during an April 22 phone conference. (Plaintiff's motion incorrectly suggests that they initiated contact for the purpose of arranging completion of additional discovery).
2. During that phone conference, Plaintiff's counsel represented that they did not have any available deposition dates to offer yet and could not produce their client for deposition within the current deposition deadline.

3. Given those representations, Defendants and ACE agreed in principal to propose to this Court during the May 6 Scheduling Conference that the parties be permitted to conclude the depositions after the current May 1 deadline. Defendants suggested that a pleading be docketed prior to the May 6th Scheduling Conference, as the parties did back in February. See Docket No. 21.
4. During the discussion, Attorney Kenney also joined the phone call part way through and the scope of proposed additional discovery was greatly expanded to include accounting practices and experts and additional potential depositions or subpoenas.
5. Defendants and ACE voiced disagreement, but agreed to wait and review whatever pleadings Plaintiff cared to draft and send the Defendants and ACE for review.
6. The next day, Defendants reviewed Plaintiff's proposed motion to extend and recognized that the relief being sought was not what they had agreed to. ACE counsel represented a similar concern.
7. Instead of recognizing that they had been caught trying to seek more than agreed to, Plaintiff's counsel suggested that Defendants and ACE were bound to consent or Plaintiff's counsel would "inform the court of your changed position."
8. Thereafter Plaintiff filed its Motion to Extend, inaccurately describing the facts and circumstances of the parties' communications, to the detriment of Defendants.

9. On May 24 or 25, Plaintiff also noticed three depositions of Defendants for April 30 and May 1, and Defendants' believe that such notices were employed as a tactic relating to Plaintiff's Motion to Extend and Defendants' refusal to consent.
10. Throughout this litigation, Plaintiff has sought concessions or demanded additional discovery from Defendants and ACE in exchange for his minimal adherence to discovery obligations.
11. Defendants aver that the deposition deadline should be extended to permit Plaintiff's attendance (which he has evaded for months), and that any further discovery should be limited to the depositions of Defendants.

Wherefore, Defendants pray that this Court deny in part Plaintiff's motion, limiting further discovery to the depositions of Plaintiff and Defendants.

Respectfully submitted,
Thomas Hunton and Arthur Hennessey,
By their attorney,

/s/Robert K. Dowd
Robert K. Dowd (BBO#132800)
3141 Hood Street, Suite 650
Dallas, TX, 75219
robtdowd@sbcglobal.net

CERTIFICATE OF SERVICE

I hereby certify that true and accurate copies of the above-pleading were served by CM/ECF upon individuals who filed notices of appearance in the Court's CM/ECF database in the above-captioned proceeding on April 28, 2015.

/s/Robert K. Dowd
Robert K. Dowd (BBO#132800)